



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0689; FRL-9654-01-R5]**

**Air Plan Approval; Minnesota; Approval of Infrastructure SIP  
Requirements for the 2015 Ozone NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of a State Implementation Plan (SIP) submission from Minnesota regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2018-0689 at <https://www.regulations.gov>, or via email to [arra.sarah@epa.gov](mailto:arra.sarah@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/docketgs/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Olivia Davidson, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0266, [davidson.olivia@epa.gov](mailto:davidson.olivia@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submission?
- II. What is EPA's analysis of this SIP submission?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I. What is the background of this SIP submission?**

In this rulemaking, EPA is proposing to approve most elements of an October 1, 2018, submission from the Minnesota Pollution Control Agency (MPCA) intended to address all applicable infrastructure requirements for the 2015 ozone NAAQS. EPA will take action in a separate future rulemaking on the portion of the submission pertaining to the interstate transport<sup>1</sup> and visibility interference requirements of section 110(a)(2)(D)(i)(I) and (II) with respect to the 2015 ozone NAAQS.

Whenever EPA promulgates a new or revised NAAQS, section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." These submissions must meet the various requirements of section 110(a)(2), as applicable. Due to ambiguity in some of the language of section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through our September 13,

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<sup>1</sup> EPA proposed disapproval of Minnesota's SIP revision submitted October 1, 2018 to address section 110(a)(2)(D)(i)(I) on February 22, 2022 (87 FR 9398).

2013 Infrastructure SIP Guidance and through regional actions on infrastructure submissions (EPA's 2013 Guidance).<sup>2</sup> Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.<sup>3</sup> EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

## **II. What is EPA's analysis of this SIP submission?**

Pursuant to section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. On July 9, 2018, MPCA opened a 30-day comment period and provided the opportunity for public hearing. No comments were received.

Minnesota provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2015 ozone NAAQS, as applicable. The following review evaluates the state's submission.

### *A. Section 110(a)(2)(A) - Emission limits and other control*

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<sup>2</sup> EPA explains and elaborates on these ambiguities and its approach to address them in our September 13, 2013, Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including EPA's prior action on Minnesota's infrastructure SIP to address the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 fine particulate matter (PM<sub>2.5</sub>) NAAQS (80 FR 63436 (October 20, 2015)).

<sup>3</sup> See *Montana Environmental Information Center v. EPA*, 902 F.3d 971 (9<sup>th</sup> Cir. 2018).

*measures*

This section requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules for compliance, and other related matters. EPA has long interpreted emission limits and control measures for attaining the standards as being due when nonattainment planning requirements are due.<sup>4</sup> In the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for this purpose. Instead, EPA is only evaluating whether the state's SIP has basic structural provisions for the implementation of the NAAQS.

Minnesota Statute (Minn. Stat.) 116.07 gives MPCA the authority to "adopt, amend and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution." Also from Minn. Stat. 116.07, MPCA has the authority to "issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants," and for other purposes.

EPA's 2013 Guidance states that to satisfy section 110(a)(2)(A) requirements, "an air agency's submission should identify existing EPA-approved SIP provisions or new SIP provisions that the air agency has adopted and submitted for EPA approval that limit emissions of pollutants relevant to the subject NAAQS, including precursors of the relevant NAAQS

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<sup>4</sup> See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

pollutant where applicable.” EPA’s 2013 Guidance at 18. Minn. Stat. chapter 116 gives MPCA the authority to develop and implement rules, including controls and emission limits to maintain new standards. While Minnesota does not have any nonattainment or maintenance areas for 2015 ozone NAAQS, MPCA identified existing controls and emission limits in Minnesota Rules (Minn. R.) that support compliance with and attainment of the 2015 ozone NAAQS. These regulations include controls and emission limits for volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are precursors to ozone. NO<sub>x</sub> emissions are limited by Minn. R. 7011.0500 to 7011.0553 as well as 7011.1700 to 7011.1730. VOC emissions are limited by the National Emission Standards for Hazardous Air Pollutants, which are incorporated by reference into Minnesota’s state rules at Minn. R. 7011.7000.

In this rulemaking, EPA is not proposing to incorporate into Minnesota’s SIP any new provisions in Minnesota’s state rules that have not been previously approved by EPA. EPA is also not proposing to approve or disapprove any existing state provisions or rules related to start-up, shutdown or malfunction or director’s discretion in the context of section 110(a)(2)(A). EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2015 ozone NAAQS.

*B. Section 110(a)(2)(B) - Ambient air quality monitoring/data system*

This section requires SIPs to provide for establishing and operating ambient air quality monitors, collecting and analyzing ambient air quality data, and, upon request, to make these data available to EPA. EPA's 2013 Guidance states that submission of annual monitoring network plans consistent with EPA's ambient air monitoring regulations at 40 CFR 58.10 is one way of satisfying requirements to provide EPA information regarding air quality monitoring activities. EPA's review of a state's annual monitoring plan includes EPA's determination that the state: (i) monitors air quality at appropriate locations throughout the state using EPA-approved Federal Reference Methods or Federal Equivalent Method monitors; (ii) submits data to EPA's Air Quality System in a timely manner; and (iii) provides EPA Regional Offices with prior notification of any planned changes to monitoring sites or the network plan.

In accordance with 40 CFR part 53 and 40 CFR part 58, MPCA continues to operate an air monitoring network that is used to determine compliance with the NAAQS. MPCA's submittal references its 2019 Annual Air Monitoring Network Plan, approved by EPA on September 18, 2018, which included a new appendix D describing Minnesota's Photochemical Assessment Monitoring Station Network Implementation Plan in order to comply with the new 2015 ozone NAAQS. Additionally, EPA approved MPCA's 2020 and 2021 Network Plans on August 23, 2019, and September 15, 2020, respectively. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(B) with

respect to the 2015 ozone NAAQS.

*C. Section 110(a)(2)(C) - Program for enforcement of control measures; minor NSR; PSD*

This section requires SIPs to set forth a program providing for enforcement of all SIP measures, and the regulation of construction of new and modified stationary sources to meet New Source Review (NSR) requirements under Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) programs. Part C of the CAA (sections 160-169B) addresses PSD, while part D of the CAA (sections 171-193) addresses NNSR requirements. EPA's 2013 Guidance states that the NNSR requirements of section 110(a)(2)(C) are generally outside the scope of infrastructure SIPs; however, a state must provide for regulation of minor sources and minor modifications (minor NSR).

1. Program for enforcement of emission limitations and control measures

A state's infrastructure SIP submission should identify the statutes, regulations, or other provisions in the SIP that provide for enforcement of emission limits and control measures.

Minn. Stat. 116.07 gives MPCA the authority to enforce any provisions of the chapter relating to air contamination. These provisions include entering into orders, schedules of compliance, stipulation agreements, requiring owners or operators of emissions facilities to install and operate monitoring equipment, and conducting investigations. Minn. Stat. 116.072 authorizes MPCA to issue orders and assess



administrative penalties to correct violations of the agency's rules, statutes, and permits, and Minn. Stat. 115.071 outlines the remedies that are available to address such violations. Lastly, Minn. R. 7009.0030 to 7009.0040 provide for enforcement measures. EPA proposes that Minnesota has met the program for enforcement of emission limitations and control measures requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

## 2. Minor NSR

An infrastructure SIP submission should identify the existing EPA-approved SIP provisions that govern the minor source pre-construction program that regulates emissions of the relevant NAAQS pollutant.

EPA first approved Minnesota's minor NSR program on May 2, 1995 (60 FR 21447). Since then, MPCA and EPA have relied on these existing provisions to ensure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the ozone and other NAAQS. EPA proposes that Minnesota has met the minor NSR requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

## 3. PSD

The evaluation of each state's submission addressing the PSD requirements of section 110(a)(2)(C) covers: (i) PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone

in the PSD program; (ii) identification of precursors to PM<sub>2.5</sub><sup>5</sup> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub><sup>6</sup> condensables in the PSD program; (iii) PM<sub>2.5</sub> increments in the PSD program; and (iv) greenhouse gas (GHG) permitting and the "Tailoring Rule" in the PSD program.<sup>7</sup>

Some PSD requirements under section 110(a)(2)(C) overlap with elements of section 110(a)(2)(D)(i), section 110(a)(2)(E), and section 110(a)(2)(J). These links are discussed in the appropriate areas below.

a. PSD provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone in the PSD program

EPA's "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline" (Phase 2 Rule) was published on November 29, 2005 (70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to

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<sup>5</sup> PM<sub>2.5</sub> refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, also referred to as "fine" particles.

<sup>6</sup> PM<sub>10</sub> refers to particles with an aerodynamic diameter of less than or equal to 10 micrometers.

<sup>7</sup> In EPA's April 28, 2011, proposed rulemaking for infrastructure SIPs for the 1997 ozone and PM<sub>2.5</sub> NAAQS, we stated that each state's PSD program must meet applicable requirements for evaluation of all regulated NSR pollutants in PSD permits (76 FR 23757 at 23760). This view was reiterated in EPA's August 2, 2012 proposed rulemaking for infrastructure SIPs for the 2006 PM<sub>2.5</sub> NAAQS (77 FR 45992 at 45998). In other words, if a state lacks provisions needed to adequately address NO<sub>x</sub> as a precursor to ozone, PM<sub>2.5</sub> precursors, PM<sub>2.5</sub> and PM<sub>10</sub> condensables, PM<sub>2.5</sub> increments, or the Federal GHG permitting thresholds, the provisions of section 110(a)(2)(C) requiring a suitable PSD permitting program must be considered not to be met irrespective of the NAAQS that triggered the requirement to submit an infrastructure SIP, including the 2015 ozone NAAQS.

explicitly identify NO<sub>x</sub> as a precursor to ozone (see 70 FR 71612 at 71679, 71699-71704). This requirement was codified at 40 CFR 51.166<sup>8</sup>.

The Phase 2 Rule required that states submit SIP revisions incorporating the requirements of the rule, including the provisions specific to NO<sub>x</sub> as a precursor to ozone, by June 15, 2007 (see 70 FR 71612 at 71683).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of section 110(a)(2)(C) regarding NO<sub>x</sub> as a precursor to ozone. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

b. Identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables in the PSD program

On May 16, 2008 (73 FR 28321), EPA issued the Final Rule on the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)" (2008 NSR Rule). The 2008 NSR Rule finalized several new requirements for SIPs to address sources that emit direct PM<sub>2.5</sub> and other pollutants that contribute to secondary PM<sub>2.5</sub> formation. One of these requirements is for NSR permits to address pollutants responsible for the secondary formation of PM<sub>2.5</sub>, otherwise known

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<sup>8</sup> Similar changes were codified in 40 CFR 52.21.

as precursors. In the 2008 NSR Rule, EPA identified precursors to PM<sub>2.5</sub> for the PSD program to be sulfur dioxide (SO<sub>2</sub>) and NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The 2008 NSR Rule also specifies that VOCs are not considered to be precursors to PM<sub>2.5</sub> in the PSD program unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOCs in an area are significant contributors to that area's ambient PM<sub>2.5</sub> concentrations.

The explicit references to SO<sub>2</sub>, NO<sub>x</sub>, and VOCs as they pertain to secondary PM<sub>2.5</sub> formation are codified at 40 CFR 51.166(b) (49) (i) (b) and 40 CFR 52.21(b) (50) (i) (b). As part of identifying pollutants that are precursors to PM<sub>2.5</sub>, the 2008 NSR Rule also required states to revise the definition of "significant" as it relates to a net emissions increase or the potential of a source to emit pollutants. Specifically, 40 CFR 51.166(b) (23) (i) and 40 CFR 52.21(b) (23) (i) define "significant" for PM<sub>2.5</sub> to mean the following emissions rates: 10 tons per year (tpy) of direct PM<sub>2.5</sub>; 40 tpy of SO<sub>2</sub>; and 40 tpy of NO<sub>x</sub> (unless the state demonstrates to the Administrator's satisfaction or EPA demonstrates that NO<sub>x</sub> emissions in an area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations). The deadline for states to submit SIP revisions to their PSD programs incorporating these changes was

May 16, 2011 (see 73 FR 28321 at 28341).<sup>9</sup>

The 2008 NSR Rule did not require states to immediately account for gases that could condense to form particulate matter, known as condensables, in PM<sub>2.5</sub> and PM<sub>10</sub> emission limits in NSR permits. Instead, EPA determined that states had to account for PM<sub>2.5</sub> and PM<sub>10</sub> condensables for applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits beginning on or after January 1, 2011. This requirement is codified in 40 CFR 51.166(b)(49)(i)(a) and 40 CFR 52.21(b)(50)(i)(a). Revisions to states' PSD programs incorporating the inclusion of condensables were due to EPA by May 16, 2011 (see 73 FR 28321 at 28341).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of

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<sup>9</sup> EPA notes that in *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the U.S. Court of Appeals for the D.C. Circuit held that EPA should have issued the 2008 NSR Rule in accordance with the CAA's requirements for PM<sub>10</sub> nonattainment areas (Title I, part D, subpart 4), and not the general requirements for nonattainment areas under subpart 1. As the subpart 4 provisions apply only to nonattainment areas, EPA does not consider the portions of the 2008 NSR Rule that address requirements for PM<sub>2.5</sub> attainment and unclassifiable areas to be affected by the court's opinion. Moreover, EPA does not anticipate the need to revise any PSD requirements promulgated by the 2008 NSR Rule in order to comply with the court's decision. Accordingly, EPA's approval of Minnesota's infrastructure SIP as to elements (C), (D)(i)(II), or (J) with respect to the PSD requirements promulgated by the 2008 NSR Rule does not conflict with the court's opinion. The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 NSR Rule also does not affect EPA's action on the present infrastructure action. EPA interprets the CAA to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

section 110(a)(2)(C) regarding identification of precursors to PM<sub>2.5</sub> and the identification of PM<sub>2.5</sub> and PM<sub>10</sub> condensables. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

c. PM<sub>2.5</sub> increments in the PSD program

On October 20, 2010 (75 FR 64864), EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>) - Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 NSR Rule). This rule established several components for making PSD permitting determinations for PM<sub>2.5</sub>, including a system of "increments" which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c), and are included in the table below.

**Table 1: PM<sub>2.5</sub> Increments Established by the 2010 NSR Rule in micrograms per cubic meter**

	Annual arithmetic mean	24-hour max
Class I	1	2
Class II	4	9
Class III	8	18

The 2010 NSR Rule also established a new "major source baseline date" for PM<sub>2.5</sub> as October 20, 2010, and a new trigger date for PM<sub>2.5</sub> as October 20, 2011. These revisions are codified in 40 CFR 51.166(b)(14)(i)(c) and (b)(14)(ii)(c), and 40 CFR 52.21(b)(14)(i)(c) and (b)(14)(ii)(c). Lastly, the 2010 NSR

Rule revised the definition of "baseline area" to include a level of significance of 0.3 micrograms per cubic meter, annual average, for PM<sub>2.5</sub>. This change is codified in 40 CFR 51.166(b)(15)(i) and 40 CFR 52.21(b)(15)(i).

On September 26, 2017 (82 FR 44734), EPA approved into the Minnesota SIP Minn. R. 7007.3000, which incorporates by reference "as amended" the Federal PSD rules at 40 CFR 52.21. These Federal PSD rules fully satisfy the requirements of section 110(a)(2)(C) regarding PM<sub>2.5</sub> increments. EPA therefore proposes that Minnesota has met this set of infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

d. GHG permitting and the "Tailoring Rule" in the PSD program

With respect to the requirements of section 110(a)(2)(C) as well as section 110(a)(2)(J), EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS that demonstrates that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of section 110(a)(2)(D)(i)(II) may also be satisfied by demonstrating that the air agency has a complete PSD permitting program correctly addressing all regulated NSR pollutants. Minnesota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including GHGs.

On June 23, 2014, the United States Supreme Court issued a

decision addressing the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group v. Environmental Protection Agency*, 573 U.S. 302 (2014). The Supreme Court said that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also said that EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Court's decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) issued an amended judgment vacating the regulations that implemented Step 2 of EPA's PSD and title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by EPA, the application of the BACT requirement to GHG emissions from Step 1 or "anyway" sources. With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), "to the extent they require a stationary source to obtain a PSD permit



if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification . . . .” *Coalition for Responsible Regulation, Inc. v. Environmental Protection Agency*, Nos. 09-1322, 10-073, 10-1092, and 10-1167, Amended Judgment (D.C. Cir. April 10, 2015).

EPA is planning to take additional steps to revise Federal PSD rules in light of the Supreme Court’s opinion and subsequent D.C. Circuit’s ruling. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to EPA’s PSD regulations. EPA is not expecting states to have revised their PSD programs in anticipation of EPA’s planned actions to revise its PSD program rules in response to the court decisions. For purposes of infrastructure SIP submissions, EPA is only evaluating such submissions to assure that the state’s program addresses GHGs consistent with both court decisions.

EPA is proposing that Minnesota’s SIP is sufficient to satisfy CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J) with respect to GHGs. This is because the PSD permitting program approved by EPA into the SIP on September 26, 2017 (82 FR 44734) continues to require that PSD permits issued to “anyway sources” contain limitations on GHG emissions based

on the application of BACT.

EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(C) with respect to the 2015 ozone NAAQS.

*D. Section 110(a)(2)(D) - Interstate transport*

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) or from interfering with measures to protect visibility in another state (prong 4).

Section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of

emissions activity in one state from interfering with measures required of any other state to prevent significant deterioration of air quality, or from interfering with measures required of any other state to protect visibility. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of CAA section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

1. Significant contribution to nonattainment

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to significant contribution to nonattainment for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

2. Interference with maintenance

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(I) requirements relating to interference with maintenance for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

3. Interference with PSD

EPA notes that Minnesota's satisfaction of the applicable infrastructure SIP PSD requirements has been detailed in the discussion of section 110(a)(2)(C). EPA further notes that the proposed actions in that discussion related to PSD are consistent with the proposed actions related to PSD for section 110(a)(2)(D)(i)(II) and are reiterated below.

EPA previously approved revisions to Minnesota's SIP to meet certain requirements obligated by the Phase 2 Rule and the 2008 NSR Rule. These revisions included provisions that explicitly identify NO<sub>x</sub> as a precursor to ozone, explicitly identify SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM<sub>2.5</sub>, regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations, and regulate condensable PM<sub>2.5</sub> and PM<sub>10</sub> in applicability determinations for purposes of establishing emission limits. EPA also previously approved revisions to Minnesota's SIP that incorporate the PM<sub>2.5</sub> increments and the associated implementation regulations, including the major source baseline date, trigger date, and level of significance for PM<sub>2.5</sub>, as required by the 2010 NSR Rule. Therefore, EPA is proposing that Minnesota's SIP contains provisions that adequately address the infrastructure requirements for the 2015 ozone NAAQS.

States also have an obligation to ensure that sources located in nonattainment areas do not interfere with a neighboring state's PSD program. This requirement can be satisfied through an NNSR program consistent with the CAA that addresses any pollutants for which there is a designated nonattainment area within the state.

Minnesota's EPA-approved NNSR regulations are contained in Minn. R. 7007 and are consistent with 40 CFR 51.165 (60 FR 27411, May 24, 1995). Therefore, EPA proposes that Minnesota has met all the applicable PSD requirements for the 2015 ozone NAAQS.

#### 4. Interference with visibility protection

In this rulemaking, EPA is not evaluating section 110(a)(2)(D)(i)(II) requirements relating to interference with visibility protection for the 2015 ozone NAAQS. Instead, EPA will evaluate these requirements in a separate rulemaking.

#### 5. Interstate and international pollution abatement

Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions requiring compliance with the applicable requirements of section 126 and section 115 (relating to interstate and international pollution abatement, respectively).

Section 126(a) requires new or modified sources to notify neighboring states of potential impacts from the source. The statute does not specify the method by which the source should provide the notification. States with SIP-approved PSD programs must have a provision requiring such notification by new or modified sources. A lack of such a requirement in state rules would be grounds for disapproval of this element.

Minnesota has provisions in its SIP-approved PSD program in Minn. R. 7007.3000 requiring new or modified sources to notify neighboring states of potential negative air quality impacts and has referenced this program as having adequate provisions to meet the requirements of CAA section 126(a). Minnesota does not have obligations under any other subsection of CAA section 126, nor does it have any pending obligations under CAA section 115. Therefore, EPA is proposing that Minnesota has met all applicable infrastructure SIP requirements of section

110(a)(2)(D)(ii) with respect to the 2015 ozone NAAQS.

*E. Section 110(a)(2)(E) - Adequate resources; state board requirements*

This section requires each state to provide for adequate personnel, funding, and legal authority under state law to carry out its SIP, and related issues. Section 110(a)(2)(E)(ii) also requires each state to comply with the requirements respecting state boards under section 128.

1. Adequate resources

To satisfy the adequate resources requirements of section 110(a)(2)(E), the state should provide assurances that its air agency has adequate resources, personnel, and legal authority to implement the relevant NAAQS.

MPCA's Environmental Performance Partnership Agreement with EPA provides MPCA's assurances of resources to carry out certain air programs. EPA also notes that Minn. Stat. 116.07 provides the legal authority under state law to carry out the SIP. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(E) with respect to the 2015 ozone NAAQS.

2. State board requirements

Section 110(a)(2)(E) also requires each SIP to set forth provisions that comply with the state board requirements of section 128 of the CAA. Specifically, this section contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under this chapter shall have at

least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Minnesota has no board or body which approves permits or enforcement orders in relation to the CAA. The administrative powers and duties of MPCA, including issuance of permits and enforcement orders, are vested in the Commissioner of the MPCA. Therefore, Minnesota has no further obligations under section 128(a)(1) of the CAA.

Under section 128(a)(2), the head of the executive agency with the power to approve permits or enforcement orders must adequately disclose any potential conflicts of interest. In Minnesota, this power is vested in the Commissioner of the MPCA. Under Minn. Stat. 10A, matters of disclosure and public interest are governed by the Minnesota Campaign Finance and Public Disclosure Board (MCFPDB). Minn. Stat. 10A.09 requires that statements of economic interest be filed with the MCFPDB upon the nomination of the Commissioner, and a supplementary statement must be submitted every year thereafter. Under Minn. Stat. 10A.07, if the Commissioner has a financial interest relating to a matter before the agency, he or she must make this interest known in writing. Decision-making responsibility on the matter must be assigned by the Governor to another employee

who does not have a conflict of interest, or the Commissioner must abstain from influence over the matter in a manner prescribed by the MCFPDB. Minn. R. 7000.0300 further prescribes a "duty of candor" for the Commissioner.

On November 2, 2017 (82 FR 50807), EPA approved MPCA's request to approve Minn. Stat. 10A.07, Minn. Stat. 10A.09, and Minn. R. 7000.0300 into Minnesota's SIP, and determined that these rules satisfied all requirements under section 128 of the CAA. Therefore, EPA is proposing that Minnesota has satisfied the applicable infrastructure SIP requirements for this section of 110(a)(2)(E) for the 2015 ozone NAAQS.

*F. Section 110(a)(2)(F) - Stationary source monitoring system*

Section 110(a)(2)(F) contains several requirements, each of which are described below.

States must establish a system to monitor emissions from stationary sources and submit periodic emissions reports. Each plan shall also require the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources. The state plan shall also require periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and correlation of such reports by each state agency with any emission limitations or standards established pursuant to this chapter. Lastly, the reports shall be available at reasonable times for public inspection.



Minn. Stat. 116.07 gives MPCA the authority to require owners or operators of emission facilities to install and operate monitoring equipment, while Minn. R. 7007.0800 sets forth the minimum monitoring requirements that must be included in stationary source permits. Minn. R. 7017 contains monitoring and testing requirements, and Minn. R. 7019 contains emissions reporting requirements for applicable facilities. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(F) with respect to the 2015 ozone NAAQS.

*G. Section 110(a)(2)(G) - Emergency powers*

Section 110(a)(2)(G) requires the SIP to provide for authority analogous to that in section 303 of the CAA, and adequate contingency plans to implement such authority. EPA's 2013 Guidance states that infrastructure SIP submissions should specify authority, vested in an appropriate official, to restrain any source from causing or contributing to emissions which present an imminent and substantial endangerment to public health or welfare, or the environment.

Minn. Stat. 116.11 provides to MPCA emergency powers, which are further discussed in Minn. R. 7000.5000. Specifically, these regulations allow the agency to "direct the immediate discontinuance or abatement of the pollution without notice and without a hearing or at the request of the agency, the attorney general may bring an action in the name of the state in the appropriate district court for a temporary restraining order to immediately abate or prevent the pollution." EPA proposes that

Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(G) with respect to the 2015 ozone NAAQS.

*H. Section 110(a)(2)(H) - Future SIP revisions*

This section requires states to have the authority to revise their SIPs in response to changes in the NAAQS, to the availability of improved methods for attaining the NAAQS, or to an EPA finding that the SIP is substantially inadequate.

Minn. Stat. 116.07 grants the agency the authority to "[a]dopt, amend, and rescind rules and standards having the force of law relating to any purpose . . . for the prevention, abatement, or control of air pollution." EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(H) with respect to the 2015 ozone NAAQS.

*I. Section 110(a)(2)(I) - Nonattainment planning requirements of part D*

The CAA requires that each plan or plan revision for an area designated as a nonattainment area meet the applicable requirements of part D of the CAA. Part D relates to nonattainment areas.

EPA has determined that section 110(a)(2)(I) is not applicable to the infrastructure SIP process. Instead, EPA will take action on part D attainment plans through separate processes.

*J. Section 110(a)(2)(J) - Consultation with government officials; public notification; PSD; visibility protection*

The evaluation of the submission from Minnesota with

respect to the requirements of section 110(a)(2)(J) are described below.

#### 1. Consultation with government officials

States must provide a process for consultation with local governments and Federal Land Managers in carrying out NAAQS implementation requirements.

MPCA is an active member of the Lake Michigan Air Director's Consortium (LADCO), which provides technical assessments and a forum for discussion regarding air quality issues to member states. Minnesota has also demonstrated that it frequently consults and discusses air quality issues with pertinent Tribes. In addition to LADCO, MPCA is an active participant in the National Association of Clean Air Agencies, which has a member total of 185 air agencies, including representatives from all EPA regional offices and headquarters, across the United States. EPA proposes that Minnesota has satisfied the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

#### 2. Public notification.

Section 110(a)(2)(J) also requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. MPCA's website (<https://www.pca.state.mn.us/air>) features information regarding health impacts of air pollution, current air quality and forecasting, and non-point, vehicle, and traditionally permitted sources. Additionally, MPCA developed a

free mobile application (Minnesota Air) that contains forecasting information. Minnesota's procedural rules are contained in Minn. R. Ch. 7000, and include general guidelines, as well as emergency and variance procedures. Minn. R. Ch. 7007 lists public notice and comment procedures for the issuance of air quality permits, which provide the public with an opportunity to comment and/or request public hearing regarding proposed SIP revisions. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of this portion of section 110(a)(2)(J) with respect to the 2015 ozone NAAQS.

### 3. PSD

States must meet applicable requirements of section 110(a)(2)(C) related to PSD. Minnesota's PSD program in the context of infrastructure SIPs has already been discussed above in the paragraphs addressing section 110(a)(2)(C) and section 110(a)(2)(D)(i)(II), and EPA notes that the proposed actions for those sections are consistent with the proposed actions for this portion of section 110(a)(2)(J).

Therefore, EPA proposes that Minnesota has met all the infrastructure SIP requirements for PSD associated with section 110(a)(2)(D)(J) for the 2015 ozone NAAQS.

### 4. Visibility protection

States are subject to visibility and regional haze program requirements under part C of the CAA (which includes sections 169A and 169B). However, EPA has determined that the CAA section 110(a)(2)(J) provision on visibility is not triggered by

a new NAAQS because the visibility requirements in part C are not changed by a new NAAQS.

*K. Section 110(a)(2)(K) - Air quality modeling/data*

SIPs must provide for performance of air quality modeling to predict the effects on air quality from emissions of any NAAQS pollutant and the submission of such data to EPA upon request.

MPCA has the authority under Minn. R. Ch. 7007.0500 to require applicable major sources to perform modelling to show that emissions do not cause or contribute to a violation of any NAAQS. Such information is mandatory for applicants subject to PSD requirements (Minn. R. Ch. 7007.3000) and/or NNSR requirements (Minn. R. Ch. 7007.4000 through 7007.4030). MPCA also maintains staff that conduct permit-related (and other) modeling, to support facilities and ensure modeling accuracy. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2015 ozone NAAQS.

*L. Section 110(a)(2)(L) - Permitting fees*

This section requires SIPs to mandate each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit.

MPCA implements and operates the title V permit program, which EPA approved on December 4, 2001 (66 FR 62967). Minn. R. 7002.0005 through 7002.0085 contain the provisions, requirements, and structures associated with the costs for

reviewing, approving, implementing, and enforcing various types of permits. EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(L) with respect to the 2015 ozone NAAQS.

*M. Section 110(a)(2)(M) - Consultation/participation by affected local entities*

States must consult with and allow participation from local political subdivisions affected by the SIP.

Minn. Stat. 116.05 authorizes cooperation and agreement between MPCA and other State and local governments, with whom Minnesota regularly consults. The Minnesota Administrative Procedures Act provides general notice and comment procedures that govern rulemaking for all state agencies, which MPCA follows during SIP development. Therefore, EPA proposes that Minnesota has met the infrastructure SIP requirements of section 110(a)(2)(M) with respect to the 2015 ozone NAAQS.

**III. What action is EPA taking?**

EPA is proposing to approve most elements of a submission from MPCA certifying that its current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) for the 2015 ozone NAAQS. EPA's proposed actions for the State's satisfaction of infrastructure SIP requirements pursuant to section 110(a)(2) and NAAQS are contained in the table below.

Element	2015 Ozone
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A
(C)2 - Minor NSR.	A

(C)3 - PSD.	A
(D)1 - I Prong 1: Interstate transport - significant contribution to nonattainment.	NA
(D)2 - I Prong 2: Interstate transport - interference with maintenance.	NA
(D)3 - II Prong 3: Interstate transport - interference with PSD.	A
(D)4 - II Prong 4: Interstate transport - interference with visibility protection.	NA
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	A
(F) - Stationary source monitoring system.	A
(G) - Emergency powers.	A
(H) - Future SIP revisions.	A
(I) - Nonattainment planning requirements of part D.	*
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	A
(J)4 - Visibility protection.	*
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation/participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
D	Disapprove
*	Not germane to infrastructure SIPs

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders

12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR



7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 16, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*

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